



Legal Advisor



<http://www.sao10.com>

Jerry Hill, State Attorney

IMPORTANT BARTOW PHONE NUMBERS:

Switchboard	534-4800
Misdemeanor	534-4928
Misdemeanor	534-4926
Victim Assistance	534-4861
Felony Intake	534-4987
Felony	534-4964
Investigations	534-4804
Violation of Probation	534-4803
Child Abuse / Neglect	534-4857
Homicide Division	534-4959
On Call Pager	819-1526
Worthless	534-4874
Juvenile Division	534-4905
Fax	534-4945
WITNESS MANAGEMENT	
Misdemeanor Traffic	534-4021
Felony	534-4020

BUILDING A CASE WITHOUT THE VICTIM

By Terri Rawasia

Domestic Violence cases are some of the most frustrating on which to work. Everyone has had experience with an uncooperative victim. In fact, it is common enough that defendants rarely proclaim, "I'm innocent!" Instead, the defendant proclaims, "But the victim wants to drop the charges!" – as if that were some form of defense.

But these cases are just as important as they are frustrating when you consider that as of December, 23 percent of the homicides committed in Polk County in 2004 were related to Domestic Violence. No one can know which successful investigation and prosecution will prevent the next homicide – so each of these cases should be treated as if it could be "the one."

In reality, for each case dropped because the uncooperative victim's testimony is the *only* evidence, there is another case being dropped (or another defendant being found not guilty) because available evi-

dence is not being collected.

For example, many cases have offense reports that describe bruises, cuts, clumps of hair, bloody clothing, items that were thrown or broken, and damning statements by the victim. But there are no photographs of the injuries, no hair collected, no clothing gathered, no broken items to set before the jury, and the information needed to make the victim statements admissible is not being recorded.

Having an offense report with the victim's statements and descriptions of the physical evidence is very important. But when the supporting information for the victim's statement is not included or when the existing physical evidence is not collected to present at trial, it creates a few difficulties.

First, many cases that should be resolved by plea are not. The defendant believes the victim will not testify and without that

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Terri Rawasia is an Assistant State Attorney who has been with the State Attorney's Office since November 2003. In addition to her case load, she is also the Division Chief over the Domestic Violence Section.

EMPLOYEE BIRTHDAYS FEBRUARY 2005

February 1

Hilda King, Felony Intake

February 2

John Kromholz, Hardee SAO
Cindy Dorman, Investigations

February 3

Cheryl Davison, Highlands SAO

February 4

Hardy Pickard

February 5

Cass Castillo, Homicide
Sandy Mathews, Felony 1
Heather Graham, Lakeland SAO

February 8

Paul Sessions, Records
Tiffany Ramkhalawan, CSE

February 9

Connie Cantrell, Misd. Intake
Carol Burlingham, Juvenile

February 10

Jay Wagner, Highlands SAO
Shelly McLeod, CSE

February 13

GeorgeAnn Hodges, Special Prosecution

February 14

Stelle Goff

BUILDING A CASE WITHOUT THE VICTIM

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testimony the statements in the offense report are not always admissible through the officer.

That leaves physical evidence. When that is not collected, the State really has no bargaining position. The defense counsel knows that describing a bruise just does not have the impact of a picture; and describing the stick that was allegedly used to strike the victim, does not have the impact of waving it before the jury. They certainly will not counsel their clients to accept a plea when there is a good chance the State cannot convince a jury beyond a reasonable doubt.

The second difficulty occurs at trial. Most jurors follow the popular detective shows and they expect some physical evidence. When there is none to collect it is a non-issue. But when the officer testifies to having observed the physical evidence, but there has been none collected – the officer is placed in an uncomfortable position.

The defense counsel will either have the officer defending the investigation (after all, how difficult is it to take a picture, collect a clump of hair?); or worse, will ask just a few questions that ‘suggest’ the investigation was improper, followed by a scathing closing argument during which the jury is told that the investigation was so poorly conducted that the jury cannot trust what ‘little’ evidence (meaning the officer’s testimony) was presented by the state.

The reality for those of us investigating and prosecuting domestic violence cases is that we should not only expect the victim

to become uncooperative – we should count on it. This allows us to approach these cases with an eye towards building the case so that the victim’s testimony is not the key piece of evidence. The following is a review of those things that will help to build such a case.

THE EXCITED UTTERANCE

The most difficult hurdle in prosecuting without the victim is establishing lack of consent and the identity of the batterer. The excited utterance may be the most effective tool available in cases in which the victim is uncooperative.

What is an excited utterance? Excited utterance is defined as a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition. It is an exception to the hearsay rule and those statements can be used as substantive evidence.

The victim or a witness can experience the startling event, which in our cases would be some form of domestic violence. Evidence of the startling event can be found in the statement itself or inferred from the declarant’s demeanor.

To establish the excited state of the declarant, include any of the following information:

- Was the victim pacing or standing?
- Did the victim gesticulate when speaking?

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- Was the victim's speech rapid?
- High pitched?
- Louder than normal conversational speech?
- Shaky?
- Difficult to understand?
- How did the victim present?
- Injured?
- Disheveled?
- Crying uncontrollably?
- Shaking?
- Did the victim appear to be in shock? Numb?
- Unable to focus?
- Move slowly or trance-like?
- Answer questions in a monotone or with nods only?

It is important to get specific information from the victim or witness *while* the victim or witness is in this excited state. Statements *relating to the startling event* – identity of the suspect, lack of consent, and whether any battery took place – should be gathered quickly, before the victim calms down.

If you ask, "What happened," the victim may launch into a long story without providing the pertinent information *before* calming down. Remember, the excited utterance exception is lost if the statements are made *after* the person calms down. So if after the officer arrives on the scene and encounters a hysterical victim, the officer calms the victim down before getting the statement, the statement will be considered hearsay. Make sure to note at what point the victim or witness calmed down; and

which statements were made while in an excited state and which statements were not.

Instead of the officer hearing an excited utterance, an excited utterance may be heard by a witness. If such is the case, the witness should provide the officer with the description of the victim's demeanor as discussed above.

IDENTIFY EVERYONE AT THE SCENE

Include the names of all officers and EMS personnel present at the scene. Even if you think they did not play a significant role – the State Attorney is required to disclose the names of anyone who *may* have information about the incident, and we are deemed to have knowledge of any information, even if not included in the report.

Identify all civilians at the scene, including any children and anyone who assisted the victim after the event. Do this even if they claim to have seen nothing. Take statements from the children. The children often witness more than the parent will admit and children are often the most credible of witnesses. Even if they did not 'see' the battery, they may have heard something. Ear-witnesses can be just as important as eyewitnesses.

Ask the victim, and if possible the suspect, who was present before, during, and after the incident. This may be circumstantial evidence that only the suspect could have committed the battery.

February 18

Ron Feschak, Investigations

February 21

Sandy Williamson, Float Secretary

February 22

Tina Roy, Special Prosecution

February 24

Dan Hartzog, CSE

February 26

Ruth Fornella, Highlands SAO
Elizabeth Williams, Special Prosecution

February 28

Cheryal Congdon, Felony Intake

February 29

Sheila Tindle, Misdemeanor

MARCH 2005

March 3

Alan Burns, Juvenile

March 5

Dave Molloy, Felony 2

March 8

Joe McCarthy, Felony Intake

March 9

Brenda Edenfield, Computer Services

March 11

Melissa Shaw, Winter Haven SAO

March 13

Cindy Spears, Front Desk
Lori Gordon, Domestic Violence

March 14

Leslie Lasseigne, Special Prosecution

March 18

Dan Butler, Investigations
Krystal McClelland, OPS

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March 19

Mitch Ladner, Felony 1

March 20Louann Lango, Felony 5
Linda Taylor, Lakeland SAOMarch 21

Paul Wallace, Homicide

March 23Tammy Furlong, Felony 2
Charlie Lee, MisdemeanorMarch 25

Kristin Williams, Scoresheets

March 26

Gene Malpas, Highlands County

March 29

David Ward, Highlands County

March 30

Brad Copley, Special Projects

March 31Steven Alamia, Felony 1
Luci Douglas, Juvenile

*Happy
Birthday!*

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Verify the identity of the victim. As strange as this may sound, in at least one violation of injunction case in which the victim became uncooperative, the issue became whether the person at the scene was who she claimed to be.

DESCRIBING THE SCENE, THE INJURY, THE VICTIM AND THE SUSPECT

Describe the location in which the battery took place. Is the furniture overturned? Is there anything scattered on the floor? Are the pictures on the wall askew? Anything broken? This is very helpful in painting a complete picture for the jury.

Be detailed in describing any injury or the appearance of the victim, suspect or witness. Many reports say “red mark to the face.” The length, the width, the degree of redness, or whether the mark was shaped like anything (i.e., fingers) – all add vividness to the description. Also include a description of the victim’s appearance – rumpled or torn clothing, disheveled hair, eyes swollen and red from crying, etc. Is the suspect angry, belligerent, yelling? Is the witness shaken, angry, outraged?

LIST AND COLLECT EVIDENCE

Surprisingly enough, items used to hit a victim are not often collected. Boots, belts, picture frames, lamps, sticks – anything the suspect threw at the victim or used to hit the victim should be collected. It is so much more effective to have items such as those in the courtroom. Having these items has impact.

Collect and enter the 911 tapes into evidence. There is often much valuable information on a 911 tape (i.e., unknown witnesses, excited utterances).

Photographs are also exceptional tools in making the incident come to life for the jury. Pictures of wrecked rooms, crying victims, ‘red marks,’ scratches and bruises are all very compelling evidence. If no photographs can be taken, state why. Defense attorneys often argue in closing arguments, “*If there was an injury, where is the evidence? There are no pictures because there was no injury!*”

Clothing, too, should be collected when it is torn or has blood on it. Often times a busted lip or injured nose does not come through in a photograph but produces blood on clothing or towels. They should be collected or at the least, photographed.

In conclusion, you should know that the State Attorney’s Office has had much success in the last year prosecuting these cases. What those successful prosecutions all had in common was a well-written offense report and the collection of physical evidence.

That combination allowed the focus to be on the defendant’s illegal conduct rather than on whether the victim would testify. This eviscerated the defendant’s “uncooperative victim” defense and many cases were resolved successfully before trial – and when they did go to trial, many juries were convinced beyond a reasonable doubt. So keep up the good work. Remember, we are always glad to hear from officers and are available should you have any questions.



State Attorney Jerry Hill was sworn in on Tuesday, January 4, 2005 at 4:00 during a ceremony held at the Historic Courthouse in Bartow. Judge Oliver Green administered the oath to State Attorney Hill during Tuesday's Ceremony.

Jerry Hill was first elected as State Attorney of the Tenth Judicial Circuit in 1984 and was re-elected without opposition in 1988, 1992, 1996, 2000 and 2004.

(Photo on the Left)
State Attorney Jerry Hill, with his wife Sharmon by his side, takes the Oath of Office. Administering the Oath is 2nd DCA Judge Oliver Green.

...LEO News...



Sheriff Grady Judd, with his wife Marisa by his side, takes the oath of Office. Administering the oath is Retired Sheriff Lawrence W. Crow, Jr.

Sheriff Grady C. Judd, Jr., was sworn in on Tuesday, January 4, 2005, at 9:00 during a ceremony held at the First Baptist Church at the Mall in Lakeland. Former Sheriff Lawrence W. Crow, Jr., administered the oath to Sheriff Judd during the ceremony.

Grady Judd began his career at the Polk County Sheriff's Office in 1972 as a dispatcher and became a deputy sheriff the same year. He worked his way up through the ranks to the position of Colonel, as Commander of the Department of Administration.

Sheriff Lawrence W. Crow, Jr., the longest-serving Sheriff in the history of Polk County, retired in January of this year. Sheriff Crow began his career in law

enforcement in 1966 with the Lakeland Police Department. He worked his way up the ranks and became Lakeland's youngest Chief of Police at 37 years of age. He served as Chief for seven years and in 1987, he was appointed sheriff of Polk County by Governor Bob Martinez.

Sheriff Crow led his agency to become one of the few agencies in the nation to become a six-star accredited agency, placing Polk County Sheriff's Office among the top 1% of law enforcement agencies in the nation.

Undersheriff Paul F. Alley, a 39 year law-enforcement veteran, also retired in January of this year. Undersheriff Alley began his career in law enforcement as a Military Police Officer in the United States Army Reserve in 1963. In 1966, he joined the Lakeland Police Department where he worked his way up the ranks to senior manager. In 1987, he joined the Polk County Sheriff's Office under the newly appointed sheriff, Lawrence W. Crow, Jr.

We thank you both for your many years of service to the citizens of Polk County and we wish you well on your retirement.



(Photo above)
Sheriff Judd presents a plaque to Retired Sheriff Crow for his Loyal and Dedicated Service to the Polk County Sheriff's Office.

(Photo below)
Sheriff Judd presents a plaque to Retired Undersheriff Paul Alley for his 18 years of Loyal and Dedicated Service to the Polk County Sheriff's Office.

(Photos provided by Michael Shanley of the Polk County Sheriff's Office)





...FROM THE COURTS...

LOSING AN INFORMANT WILL NOT NECESSARILY DESTROY A CASE.

Hardee County
124 South 9th Avenue
Wauchula, FL 33873
Phone: (863) 773-6613
Fax: (863) 773-0115

Highlands County
411 South Eucalyptus
Sebring, FL 33870
Phone: (863) 402-6549
Fax: (863) 402-6563

Polk County
P.O. Box 9000, Drawer SA
Bartow, FL 33831-9000

Child Support Enforcement
215 N. Floral Avenue
Bartow, FL 33830
Phone: (863) 519-4749
Fax: (863) 519-4759

Lakeland Branch Office
930 E. Parker Street, Suite 238
Lakeland, FL 33801
Phone: (863) 499-2596
Fax: (863) 499-2650

Winter Haven Branch Office
Gill Jones Plaza
3425 Lake Alfred Rd. 9
Winter Haven, FL 33881
Phone: (863) 401-2477
Fax: (863) 401-2483

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The defendant was charged with sale of cocaine. During the discovery process, he filed a motion for disclosure of the identity of a confidential informant, asserting that his defense was misidentification and that the informant had witnessed the transaction where the undercover officer bought the cocaine. The state objected to disclosure based in part on the fact that it did not know the identity or whereabouts of the informant. Because the

state could not produce the informant, the trial court dismissed the charges. On appeal, the Supreme Court reversed and remanded the case for an evidentiary hearing, holding that in the absence of bad faith there is no discovery violation when the state cannot produce an informant because it does not know the informant's identity or whereabouts. *Simmons v. State*, 29 FLW S671 (Fla. Nov. 18, 2004).

POSSESSION OF SOMETHING WHICH LOOKS LIKE A CONTROLLED SUBSTANCE DOES NOT ESTABLISH THAT IT IS A COUNTERFEIT CONTROLLED SUBSTANCE.

The defendant, a juvenile, was charged with possession of a counterfeit controlled substance with intent to sell. During a consensual encounter, an officer observed the defendant chewing what appeared to be cocaine rocks. He asked the defendant to spit the substance from his mouth, and the defendant complied, producing two rocks in wrappers and several loose rocks. The officer arrested the defendant, and field tested the rocks. The

test proved negative for cocaine. The defendant was convicted as charged, but on appeal, the Fifth District reversed, holding that in order for a person to be convicted of possession of a counterfeit controlled substance, the substance must be in a container labeled as a controlled substance or the person must represent the substance to be a controlled substance. *J.L.F. v. State*, 29 FLW D2640 (Fla. 5th DCA Nov. 19, 2004).

Top Cops

Wednesdays in a row, Officer Evans had three trials which forced her to come before the court in Winter Haven for almost the entire afternoon. Time limitations generally prevent me from being able to prepare TBCs the way I like to prepare jury trials. The third TBC was a noise infraction which required the certification documents for the laser she used for distance measurements, so you can imagine how elated I was to learn that Officer Evans was well prepared with documents in hand. She did this without me having to ask. Her preparedness and familiarity with her cases sure made my job a lot easier, especially on a hectic Wednesday afternoon. I would like to see more of the officers follow her example.

I would like to take a moment to recognize Marni Evans of the Auburndale Police Department. This past month, three

ASA Torie Avalon, Winter Haven Branch Office